of from 6 months and 1 day to 4 years and 2 months; presidio correccional in its medium and maximum, 2 years, 4 months and 1 day to 6 years; presidio correccional in its maximum 4 years, 2 months and 1 day to 6 years. Then follows presidio correccional in its minimum, medium and maximum, mixing in with presidio mayor with its minimum, medium and maximum and arrest mayor, cadena perpetua, cadena temporal, reclusion perpetua, reclusion temporal, relegacion perpetua, relegacion temporal, perpetual and temporal expulsion, confiniemento, banishment, public censure, caution, perpetual absolute disqualification, temporary absolute disqualification, perpetual and temporary, special disqualification. After the conclusion of the trial it is customary for the fiscal to ask the imposition of a certain penalty, which the counsel for the accused frequently opposes as too severe; then follows a prolonged search through the labyrinth attached to the criminal code to determine the penalty fitting the transgression, which ought to be decided by the judge from a comparison and consideration of all the circumstances as shown by the evidence, and from a clearly defined scale embracing a certain number of years as provided by the codes of the several States of the Union. *W. F. Norris.*

Ramblon, P. I.

NEGRO PEONAGE AND THE THIRTEENTH AMENDMENT.

No little interest has been aroused by Judge Speer's recent decision in the District Court at Savannah (*United States v. McClellan,* 127 Fed. 971), maintaining the application of the Thirteenth Amendment to uphold the constitutionality of the statutes of 1867 against peonage, and their prohibition of recent attempts to obtain forced labor from negroes to work out debts. This incipient system of compulsory labor, with its partial return to *ante bellum* conditions, would seem to have met with a large measure of approbation among leaders in public affairs in the State. One of the defendants was the sheriff of the county where the negro in question was seized; members of Congress and other prominent men were active in behalf of the defense; the opinion makes allusion to the political aspect of the questions involved. For this reason the case has an interest quite out of proportion to its legal importance, for it is difficult to conceive that it could ever be successfully maintained that involuntary servitude within the literal meaning of the Thirteenth Amendment was not charged by the indictment, on a demurrer to which the case came before the court.

It is a more plausible proposition that the statute of 1867, passed as it was to check the New Mexican system of peonage then in operation, was not intended to have any such result as that sought, but on this point, as on the other, the well-rounded arguments of the court carry conviction. A rigid and impartial interpretation of these provisions, which represent a large part of the tangible results of our Civil war, will, it is to be hoped, check practises which,

however much they may be approved by local opinion, are undoubtedly looked upon throughout the country as a whole as obnoxious to the spirit of our institutions.

In this connection, it may not be out of place to note some of the attempts which have been made to limit or extend the application of this Thirteenth Amendment. It is hardly necessary to allude to the effort made in the *Slaughter House Cases,* 16 Wall. 36, to include within "involuntary servitudes" monopolies created by law in occupations which, in the absence of statute, would be lawful for the public. In *Tyler v. Heidorn,* 46 Barb. 439, an interesting but futile attempt was made to apply the amendment to invalidate an obligation to pay an annual rental in bushels of wheat in accordance with the covenant of the grantee of the land concerned. On the ground that begetting a bastard child had been made a misdemeanor it has been held not unconstitutional to compel the father to work out fines under bastardy proceedings. *Myers v. Stafford,* 114 N. C. 234. And a State constitutional provision substantially similar to the Thirteenth Amendment has been held not to be contravened by a statute providing that a wilful failure by a laborer without just cause to reasonably fulfill his contract should render him liable to fine or imprisonment. *State v. Williams,* 32 S. C. 583. Again, the employment at labor of a person committed to a city prison, crediting him with one dollar a day on the judgment against him is not repugnant to the Amendment. *Topeka v. Boutwell,* 53 Kan. 20. On the other hand, in *Thompson v. Bunton,* 117 Mo. 83, a statute authorizing a vagrant, unconvicted of crime, to be hired for six months to the highest bidder, was declared a contravention. An exceptionally salutary application was made when it was held in *Re Sah Quah,* 31 Fed. 327, that the customs prevalent in Alaska of slaveholding and enforced servitude among the native tribes were not only contrary to the terms of the Amendment, but also subject to its provisions.

As has been intimated, it is its connection with the race question in the South which lends to the recent peonage case its chief importance. As long as the cleft between the races remains so broad, as long as the memories of negro slavery remain so vivid, as long as the negro race itself remains in a condition of such widespread ignorance, courts will undoubtedly have to deal with efforts such as are involved in this case to nullify in part the constitutional requirements on this subject. It will be generally agreed that, aside from the purely legal phase of the question, to permit such practices would have an unhealthy influence, and would tend to the postponement of the solution of one of our most vital as well as most difficult national problems.

### ASSUMPTION OF RISK GROWING OUT OF THE NON-PERFORMANCE OF A MASTER'S STATUTORY DUTY.

That the common law places upon the master certain duties for the protection of his servant is fundamental; that these duties cannot